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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Madison Services, Inc.

**File:** B-278962

**Date:** April 17, 1998

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Christopher Solop, Esq., and Lynn Hawkins Patton, Esq., Ott & Purdy, for the protester.

Christopher M. Bellomy, Esq., George N. Brezna, Esq., and Patrick J. Coll, Esq., Department of the Navy, for the agency.

Jeanne W. Isrin, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest that solicitation provision for variable option periods of 1 to 12 months is unduly restrictive of competition is denied where the record indicates that the agency needs the flexibility to extend the contract by periods of 1 to 12 months in order to ensure the continual provision of maintenance for family housing developments in the face of changing circumstances and requirements.

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## DECISION

Madison Services, Inc. protests the terms of request for proposals (RFP) No. N00187-95-R-6050, issued by the Naval Facilities Engineering Command (NAVFAC), for maintenance of family housing developments in the Tidewater region of Virginia. The protester alleges that the specified provisions either are ambiguous, unduly restrictive of competition, or otherwise violate the Federal Acquisition Regulation (FAR).

We deny the protest.

The RFP contemplates award of a fixed-price, indefinite-delivery/indefinite-quantity contract to the offeror whose offer represents the best value to the government, price and other factors considered. The solicitation provides for a contract term with a base period of 12 months and the option to extend the term up to a total duration of 60 months. Specifically, the solicitation included NAVFAC standard clause 5252.217-9301, "OPTION TO EXTEND THE TERM OF THE CONTRACT - SERVICES (JUN 1994)," amended to establish the 60-month overall term, which provides in relevant part that:

- a. The Government may extend the term of this contract for a term of one (1) to twelve (12) months by written notice to the Contractor within the performance period specified in the Schedule; provided that

the Government shall give the Contractor a preliminary written notice of its intent to extend before the contract expires. The preliminary notice does not commit the Government to an extension.

Madison objects that the provision for variable option periods of 1 to 12 months unduly restricts competition because (1) without definite option periods, small businesses like Madison will have to load all indirect costs into the base year, hence making their prices noncompetitive with large businesses that perform numerous other government contracts and can spread their overhead costs over a greater pool of work; and (2) brief, unpredictable performance periods have a greater effect on small businesses, which are less likely to be able to hire and retain a dedicated workforce under conditions of continual job instability.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition, and include restrictive provisions only to the extent necessary to satisfy the agency's needs. 10 U.S.C. § 2305(a)(1)(A)(i), B(ii) (1994); Mortara Instrument, Inc., B-272461, Oct. 18, 1996, 96-2 CPD ¶ 212 at 6. The contracting agency, which is most familiar with its needs and how best to fulfill them, must make the determination as to what its needs are in the first instance, and we will not question that determination unless it has no reasonable basis. Innovative Refrigeration Concepts, B-272370, Sept. 30, 1996, 96-2 CPD ¶ 127 at 3.

The provision here for variable option periods is unobjectionable. Nothing in the FAR prohibits variable option periods nor requires that an option period be more than a month in duration. Nor do we think that the provision for variable option periods exceeds the agency's needs or unduly restricts competition. In this regard, the agency explains that it needs the flexibility to extend the contract by periods of 1 to 12 months in order to ensure the continual provision of maintenance for family housing developments in the face of changing circumstances and requirements. To cite one example of many set forth by the agency, with respect to the existing procurement, due to a Navy initiative to regionalize housing maintenance services, services for two additional family housing developments were added to the procurement. One of the additional developments had in place a contract for maintenance services which contained clause 5252.217-9301; in order to provide for continual services at that development, and yet have the contract terminate at the anticipated start of the contract for the subject procurement, contracting officials extended that contract for a period of 6 months, pursuant to the clause. We find the agency's justification as to why it needs the variable option periods here to be reasonable.

The fact that the variable option period provision imposes some risk on the contractor does not demonstrate that it exceeds the agency's needs or that it is an undue risk precluding the use of an option. FAR § 17.202(c)(1). We note that an agency is not prohibited from soliciting offers based upon a proposed contract

imposing substantial risk upon the contractor and minimum administrative burdens upon the agency. J & J Maintenance, Inc., B-244366, Oct. 15, 1991, 91-2 CPD ¶ 333 at 2-3 (requirement that option period prices be the same as base year prices). As risk inheres in any contract, offerors are expected to use their professional expertise and business judgment in anticipating a variety of influences affecting performance costs. Id. In particular, to the extent that Madison is relying on the agency's exercise of options in pricing its proposal, we note that options are generally exercisable at the sole discretion of the government, and a contractor thus has no legal right whatsoever to compel the government to exercise an option. Wayne D. Josephson, B-256243, May 12, 1994, 94-1 CPD ¶ 307 at 5; Digital Sys. Group, Inc.--Recon., B-252080.2, Mar. 12, 1993, 93-1 CPD ¶ 228 at 2. Furthermore, even if the procurement structure or requirements, in fact, placed Madison at a competitive disadvantage, this alone does not render them unreasonable, since in seeking full and open competition, an agency is not required to construct its procurements in a manner that neutralizes competitive advantages that some firms may have over others by virtue of their own particular circumstances, where the advantages did not result from government action. Mortara Instrument, Inc., supra; International Tech. Corp., B-233742.2, May 24, 1989, 89-1 CPD ¶ 497 at 9.

Madison also challenges solicitation provisions with respect to the evaluation of offerors' financial stability, one of the five stated evaluation factors. In this regard, the solicitation requires offerors to "demonstrate their ability to sustain their financial obligations during the first 90 days of this contract" and requires them to furnish: (1) a business credit report, no older than 1 year, from a credit reporting agency; (2) a letter from a financial institution showing the offeror's available line of credit; and (3) audited income/financial statements with notes for the last 2 years.

Madison argues that the requirement for audited financial statements is unduly restrictive because audited statements are expensive and typically acquired only by large businesses, and statements which are simply "reviewed" by accountants are adequate evidence of an offeror's financial capability. Agencies, however, enjoy broad discretion in the selection of evaluation criteria, and we will not object to the use of particular evaluation criteria or an evaluation scheme so long as they reasonably relate to the agency's needs in choosing a contractor that will best serve the government's interests. Leon D. DeMatteis Constr. Corp., B-276877, July 30, 1997, 97-2 CPD ¶ 36 at 3-4.

Here, the agency reports that since the contractor will be required to mobilize, maintain, and pay a workforce that is adequate to maintain three separate family housing projects, but the workload can vary significantly and payment for work performed can take as long as 60 to 90 days, the contractor's financial capability will directly affect its ability to perform. In order to evaluate proposals accurately in this area, it is reasonable for an agency to require trustworthy and accurate financial data on each offeror. Audited financial statements generally disclose a firm's actual financial position and operations, Zeiders Enters., Inc., B-251628,

Apr. 2, 1993, 93-1 CPD ¶ 291 at 5 n.4, and the cost or burden of obtaining them does not preclude an agency from requiring them to evaluate financial strength. See Allied Prod. Management Co., Inc., B-236227.2, Dec. 11, 1989, 89-2 CPD ¶ 534 at 4 (not improper to require audited financial statements from proposed individual sureties); Consolidated Indus. Skills Corp., B-236239.2, Oct. 6, 1989, 89-2 CPD ¶ 328 at 3 (not improper to require audited financial statements from proposed individual sureties). Nor do we find merit to Madison's argument that the solicitation provision with respect to the line of credit requirement is ambiguous because it does not state whether it has to be irrevocable. As noted by the agency, nothing in the wording of the requirement indicates that the line of credit must be irrevocable; hence, by implication, it may be revocable.<sup>1</sup>

The protest is denied.

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<sup>1</sup>Although Madison in its protest challenged additional provisions of the solicitation, the agency responded in its report to these arguments, and the protester in its comments simply stated that it "waives none of its bases for protest." Since Madison has failed to substantively rebut the agency's facially reasonable position on these issues, we view them as abandoned and will not consider them. See LSS Leasing Corp., B-259551, Apr. 3, 1995, 95-1 CPD ¶ 179 at 5 n.6.